

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Cornelius E. Brown,

Plaintiff,

v.

Dyer, et al.,

Defendants.

Case No. 3:23-cv-00626-ART-CLB

ORDER DISMISSING AND CLOSING
CASE

Plaintiff Cornelius Brown initiated this action with an application to proceed *in forma pauperis* and access prison grievance records. (ECF Nos. 1, 1-1). But Brown did not file a complaint. So on December 11, 2023, this Court ordered Brown to file a complaint on or before January 25, 2024. (ECF No. 3). That deadline expired and Brown did not file a complaint or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

1 The first two factors, the public's interest in expeditiously resolving this
2 litigation and the Court's interest in managing its docket, weigh in favor of
3 dismissal of Brown's claims. The third factor, risk of prejudice to defendants, also
4 weighs in favor of dismissal because a presumption of injury arises from the
5 occurrence of unreasonable delay in filing a pleading ordered by the court or
6 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
7 1976). The fourth factor—the public policy favoring disposition of cases on their
8 merits—is greatly outweighed by the factors favoring dismissal.

9 The fifth factor requires the Court to consider whether less drastic
10 alternatives can be used to correct the party's failure that brought about the
11 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,
12 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*
13 the party has disobeyed a court order does not satisfy this factor); *accord*
14 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts "need not
15 exhaust every sanction short of dismissal before finally dismissing a case, but
16 must explore possible and meaningful alternatives." *Henderson v. Duncan*, 779
17 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed
18 until Brown files a complaint, the only alternative is to enter a second order
19 setting another deadline. But the reality of repeating an ignored order is that it
20 often only delays the inevitable and squanders the Court's finite resources. The
21 circumstances here do not indicate that this case will be an exception. Setting a
22 second deadline is not a meaningful alternative given these circumstances. So
23 the fifth factor favors dismissal.

24 **II. CONCLUSION**

25 Having thoroughly considered these dismissal factors, the Court finds that
26 they weigh in favor of dismissal. It is therefore ordered that this action is
27 dismissed without prejudice based on Cornelius Brown's failure to file a
28 complaint in compliance with this Court's December 11, 2023, order. The Clerk

1 of Court is directed to enter judgment accordingly and close this case. No other
2 documents may be filed in this now-closed case. If Cornelius Brown wishes to
3 pursue his claims, he must file a complaint in a new case and either pay the
4 required filing fee or apply for *in forma pauperis* status.

5
6 DATED THIS 8th day of February 2024.

7 

8 ANNE R. TRAUM
9 UNITED STATES DISTRICT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28